IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 633 OF 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE ORIENTAL INSURANCE CO. LTD. - Appellant(s)

Versus

PRABHABEN WD/O. VALJI RAVJI THACKER & ORS. - Respondent(s)

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Appearance :

Ms. Viraj Fojdar and Shri Shalin Mehta for Appellant(s).
Shri Nalin K. Thakker for Respondent Nos. 1/1 to 1/4.
None for Respondent No.2 to 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/09/2007

ORAL JUDGMENT

The appellant, being aggrieved by the judgement and award dated 30th August, 1990 passed by the learned Motor Accident Claims

Tribunal (Main), Kutch at Bhuj in M.A.C.P. No. 184 of 1985, is before this Court with a submission that the learned Tribunal erred in holding that the appellant was answerable to the award made in favour of the claimants.

2. Ms. Viraj Fojdar, learned Counsel for the appellant, after taking me through the evidence and the findings recorded by the learned Tribunal below, submitted that as the tractor attached with the trailer would come within the definition of “goods vehicle”, the liability of the Insurance Company would be limited to the extent of Rs.1,50,000/- only. She submitted that in absence of any evidence from the side of the claimants that no trailer was attached to the tractor, the learned Tribunal below was unjustified in holding the Insurance Company liable to the full extent. It was also contended that the learned Tribunal below unjustifiably awarded interest at the rate of 12% per annum on the amount awarded in favour of the respondents-claimants.

3. Shri Nalin K. Thakker, learned Counsel for the respondents-claimants, however, submitted that the claimants had come with a straight case that the accident was caused by the tractor and if the Insurance Company wanted to wriggle out of its liability, then, the burden was upon the Insurance Company to prove that the tractor was

attached with the trailer. In relation to the rate of interest, it was submitted that in the year 1990, looking to the prevalent law, the learned Tribunal was not unjustified in awarding 12% interest per annum.

4. The question relating to the tractor being a goods vehicle or not would not depend upon much of the discussion. If the Insurance Company wanted to take a defence that the tractor attached with the trailer was used as a goods vehicle, then, such evidence should have been brought on record. The Insurance Company was also required to prove that it did not charge two premiums, one for the tractor and another for the trailer, otherwise the Insurance Company would not be allowed to say that though they had charged two premiums, but, the vehicles would be treated as one. If two premiums are charged, then, the insurance Company would be answerable for the lapses on the part of each of the vehicles. Even otherwise in the present matter, it has not come on record that the tractor was attached with the trailer, the Insurance Company if wanted to take benefit of the clauses of the policy in relation to the limited liability, then, it was for the Insurance Company to plead and prove that the vehicle was a goods vehicle. Unfortunately, the Insurance Company did not bring on record any evidence in support of their case. On merits, I am unable to find any fault with the findings

recorded by the learned Tribunal below. Present is a case where the tractor had hit the claimant on the back.

5. So far as the rate of interest is concerned, the learned Tribunal certainly was unjustified in awarding the interest @ 12% per annum on the said amount when the ordinary trend is to award 6% interest per annum. I reduce down the rate of interest from 12% per annum to 6% per annum. If on the basis of the calculations made at the rate of 12% per annum, the Insurance company has deposited the amount and the same has been withdrawn by the claimants, then, the Insurance Company would be entitled to recover the amount paid in excess of its liability now fixed, with 6% interest per annum from the date of deposit till realisation.

6. The appeal to the extent indicated above is allowed. No costs.

[R.S.Garg, J.]

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